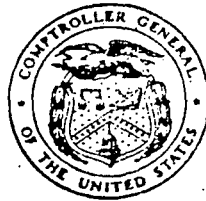


DECISION

L-CP
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-210121**DATE:** July 6, 1983**MATTER OF:** Don L. Hawkins - Per Diem - Temporary
Duty Station**DIGEST:**

Employee of the Bonneville Power Administration (BPA) who was selected to fill a vacant position with his duty station in Missoula, Montana, and temporary duty to be performed in Kalispell, Montana, may be paid per diem for duty he performed at Kalispell from July 27, 1981, through August 3, 1982, pending a relocation of the District Office to Missoula, since evidence indicates Kalispell was a temporary duty station. BPA intended that employee perform temporary duty at Kalispell for only a short period of time but encountered difficulties in locating suitable office space. Further, employee had reason to expect that the assignment would terminate at an early date.

This decision is in response to a request by Mr. Gordon S. Haynes, Authorized Certifying Officer, Bonneville Power Administration (BPA), Department of Energy, as to whether travel vouchers submitted by Mr. Don L. Hawkins, an employee of the agency, may be certified for payment. The vouchers cover temporary duty performed by Mr. Hawkins at Kalispell, Montana, during the period July 27, 1981, through August 3, 1982. Vouchers for the period July 27 through December 31, 1981, have been paid in the amount of \$3,721.72, of which \$3,057.13, represents amounts paid for temporary duty at Kalispell during the period in question. Additional vouchers, a portion of which represent temporary duty at Kalispell during the period January 1 through August 3, 1982, for \$3,618.54, have not been processed pending a determination by this Office as to whether the circumstances surrounding Mr. Hawkins' performance of temporary duty at Kalispell precludes the payment of per diem. For the reasons hereafter stated, the payment of per diem is authorized for the entire period under consideration.

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BACKGROUND

On May 1, 1981, a reorganization was approved to relocate the Bonneville Power Administration's Montana District Office from Kalispell, Montana, to Missoula, Montana. It was anticipated that the relocation would take place during July or August 1981. However, due to difficulties in locating suitable office space in Missoula, the physical move from Kalispell to Missoula was not made until August 16, 1982.

In July 1981, Mr. Hawkins was selected to fill a vacant position of Electrical Engineer in the Montana District Office. The vacancy announcement for the position showed its location (official duty station) as Missoula, Montana. An added note included on the vacancy announcement stated:

"The Montana District Office is presently located at Kalispell, Montana. Relocation of the office to Missoula has been approved by DOE. Although we expect the relocation to take place by September 1981, the effective date has not been established. The selected applicant will be duty stationed in Missoula, but may be in a travel status to Kalispell until office relocation occurs."

A personnel action for Mr. Hawkins shows the effective date of his promotion as July 26, 1981, and that moving expenses would be paid for his relocation from Bridgeport, Washington, to Missoula, Montana. Thus, in July 1981, Mr. Hawkins assumed his duties as District Engineer, reporting to the Kalispell District Office, and duty was performed in Kalispell in the absence of the establishment of the District Office in Missoula.

Further, on July 31, 1981, an official notice was given to employees of the Kalispell District Office stating that its function was to be transferred to Missoula, and that the staff was to proceed with necessary real estate transactions and other actions in anticipation of the move. The notice indicated that the effective date of the reassignment was dependent upon acquisition of suitable office space.

In his memorandum of August 3, 1982, the Area Administrative Officer also explained that after he had requested that space be located for the Montana District Office in Missoula on May 27, 1981, for occupancy in August 1981, a long series of difficulties commenced in locating suitable office space, and the occupancy date was set back on numerous occasions. He states that his office had no way of foreseeing these problems.

Mr. Hawkins received a travel authorization on March 15, 1982, for relocation from Bridgeport, Washington, to Missoula, Montana. His family remained in Bridgeport until April 9, 1982, when their house was sold. They lived in Kalispell until June 1, 1982, when they purchased a residence in Missoula. While performing temporary duty in Kalispell, the Administrative Officer states that Mr. Hawkins stayed with relatives and claimed only the meal portion of the per diem allowance. The rate for meals was reduced by 10 percent after the appropriate number of days had elapsed while performing temporary duty in Kalispell.

OPINION

The Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), do not contain a formal definition of a temporary duty assignment. However, under the provisions of FTR para. 1-7.6a, an employee may not be paid per diem at his permanent duty station or at the place of abode from which he commutes daily to his official station.

This Office has repeatedly held that an agency may not designate an employee's official duty station at some place other than the place at which he is expected to perform the preponderance of his duties in order to pay him per diem at such place. 31 Comp. Gen. 289 (1952); B-172207, July 21, 1971. In the decision referred to by the certifying officer, 25 Comp. Gen. 136 (1945), we stated at page 138:

"The post of duty of an employee is required by regulation to be the place at which the employee actually is stationed; and, under rulings of many years standing, such post of duty is the place where the employee expects,

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and is expected, indefinitely to spend the greater part of his time - where, normally, his residence would be established and there would be no extra subsistence expenses to be incurred or to be reimbursed through the medium of a per diem."

This Office has also long held that the location of an employee's official duty station is a question of fact, not limited by the agency's designation, to be determined from the orders directing the assignment, and from the nature and duration of the assignment. Frederick C. Welch, B-206105, December 8, 1982, 62 Comp. Gen. 80. We have stated that the duration and nature of the duties assigned are of particular importance in making the determination of whether an assignment to a particular duty station is a permanent change of station. 36 Comp. Gen. 757 (1957); 33 Comp. Gen. 98 (1953). We have also determined that there is no hard and fast rule as to the length of time which an employee may be entitled to subsistence at a particular place. It is dependent not so much on the length of time as upon the nature of the duties and whether, as a matter of fact, that place constitutes his permanent duty station or a temporary assignment. 18 Comp. Gen. 423, 424 (1938). The actual facts in each case are controlling.

The length of Mr. Hawkins' assignment to Kalispell (approximately 12 months) was of such duration as to raise a question concerning the validity of its designation as his temporary duty station. However, under the circumstances, such designation is valid under the previously cited regulations and the decisions of this Office. Here, in the vacancy announcement, it was stated that the selected applicant, Mr. Hawkins, would be duty stationed in Missoula but might be in a travel status to Kalispell until the relocation of the Montana District Office to Missoula actually occurred. Although efforts to locate suitable office space in Missoula required an inordinate amount of time, responsible agency officials have stated that per diem was initially authorized to Mr. Hawkins to perform temporary duty in Kalispell in view of the apparent imminent transfer of the district office. This decision was made by BPA officials to avoid the costs of two permanent change of stations in rapid succession for the selectee.

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Further, after the initial decision was made to move the district office to Missoula and the request made that suitable office space be located in Missoula and be available for occupancy in August 1981, a long series of difficulties commenced in locating suitable office space, and the occupancy date was set back on numerous occasions. We note, and agree with the statement by the Area Administrative Officer, that his office had no way of foreseeing these problems. We also note that the employees were notified on July 31, 1981, of the pending closure of the Kalispell District Office, and told to proceed with necessary real estate transactions in anticipation of this move. Cf. XB-172207, cited above.

In summary, it was intended by BPA officials that the performance of temporary duty by Mr. Hawkins at Kalispell would only be required for a short period of time, i.e., 2 or 3 months. Further, it appears that Mr. Hawkins, at all times during the continuance of his assignment at Kalispell, had reason to believe and expect that the assignment was likely to terminate at an early date. 25 Comp. Gen. 136, supra. Therefore, recognizing the facts and circumstances as they actually occurred, we find no basis to question the designation by the BPA of Missoula as Mr. Hawkins' permanent duty station, with the performance of temporary duty at Kalispell, insofar as that designation affects the travel vouchers submitted. Robert E. Larrabee, 57 Comp. Gen. 147 (1977).

Accordingly, Mr. Hawkins is authorized per diem for the entire period of his temporary duty assignment, July 27, 1981, through August 3, 1982. The travel vouchers processed for the period July 27 through December 31, 1981, as to entitlement to per diem, need not be disturbed. Similarly, the travel vouchers covering the period of January 1 through August 3, 1982, may be certified for payment, if otherwise correct.

Milton J. Fowler

Acting Comptroller General
of the United States